

REMARKS

Claims 43 and 52 are amended. New claims 54-56 are added. Upon entry of this amendment, claims 40-46, 50 and 52-56 will be pending.

Claim Rejections - 35 USC §112

As noted by the examiner in the Interview Summary dated 6/26/08, the objection under 35 USC §112 is withdrawn.

Allowable Subject Matter

Claims 43 and 52 are amended to include all of the limitations of the base claim and any intervening claims. Accordingly, as acknowledged by the examiner, claims 43-45, 52 and 53 are in condition for allowance.

Claim Rejections - 35 USC §103

Claims 40-42, 46 and 50 are rejected as unpatentable over Perzon, Fukushima, Rhoads and Topper et al.

Claim 40 is amended to state that applicant's food product server includes a cabinet (e.g., 5 in Figs. 1 and 2) having a counter top surface (e.g., 31 in Fig. 6A) defining a generally horizontal plane, a recess (e.g., 23) below the generally horizontal plane for receiving one or more food serving pans (e.g., 27) for holding food products, a breath guard (e.g., 21) mounted for pivotal movement with respect to the cabinet between a lowered substantially horizontal position for covering said food products in the recess and a raised position, and first and second power assist devices (e.g., 95, 97) mounted such that they are not lower than the breath guard when the breath guard is in its generally horizontal position and such that they do not extend down into the recess below the generally horizontal plane of the counter top as the breath guard is moved between

its raised and lowered positions, as is evident from Figs. 1, 2, and 3A-3C. There are several advantages to this arrangement. First, food from the pans cannot spill down onto the power assist devices. Second, clear and unobstructed access to the walls of recess is provided, making them easy to clean. This is important in a food service environment where sanitary conditions are required. Third, the length of the recess (and thus the overall length of the cabinet) is reduced, since there is no need to provide extra room in the recess for the power assist devices. Further, because the power assist devices are located outside the recess, a person reaching into the recess is not exposed to contact with the devices, which is desirable for reasons of safety and sanitation.

In sharp contrast, the power assist devices in Fukushima are at a location lower than the cover plate 3 and extend down into the recess of the cabinet. This prior art arrangement is not desirable in a food service system, since the devices collect debris and make cleaning of the recess walls more difficult. Also, since food pans come in standard dimensions, extra room must be added to the length of the recess to accommodate the power assist devices, thus increasing the overall length of the cabinet. Further, the power assist devices are exposed to a person reaching into the cabinet, which is undesirable for reasons of safety and sanitation. It is apparent, therefore, that applicant's claimed design represents a substantial and non-obvious improvement over Fukushima.

Nor would applicant's claimed power assist arrangement have been obvious in view of Topper et al. which shows gas springs 62, 64 mounted lower (on the recess side) than the service door 40. Like Fukushima, the gas springs of Topper et al. are at a location lower than the service door when the door is moved to a generally horizontal position as the door is swung from its

closed position in Fig. 2 to the open position shown in Fig. 3. Even if the door 40 was modified to have a horizontal closing, Topper et al. teaches mounting the gas springs 62, 64 at a location lower (on the recess side) than the service door in that position. In other words, if the left pivot side of the service 40 door shown in Fig. 1 of Topper et al. were dropped down so that the door closed in a horizontal position, the gas springs 62, 64 would also be moved down to a position lower than the door. There is nothing suggesting that the power gas springs 62, 64 would ever be mounted in a position in which they are not lower than the service door 40, as in applicant's claimed design. Thus, even the hypothetical combination of Perzon, Fukushima and Topper et al. fails to show or suggest the subject matter of amended claim 40.

Claims 41, 42, 46 and 50 depend, either directly or indirectly, from claim 40 and are submitted to be allowable for at least the same reasons as claim 40. Further, the dependent claims cite additional features not shown or suggested by the prior art. In this regard, it is noted that the examiner's rejection of these claims in the last Office action do not appear to be based on the wording of the claims, or even the features described by the claims. Accordingly, the basis for the rejection is not clear. Applicant requests that any future rejections be clearly worded so that an appropriate response can be made.

New Claims 54-56

Claim 54 is added and depends from claim 40. It further distinguishes over the prior art by stating that the power assist devices are mounted such that they are higher than the breath guard when the breath guard is in generally horizontal lowered position.

Claim 55 is added and depends from claim 40. It further distinguishes over the prior art by stating that the second power assist device (97 in Figs. 3A-3C) is mounted such that the entire device remains higher than the breath guard as the breath guard moves from its lowered position (Fig. 3A) to its raised position (Fig. 3C). This design is neither shown nor suggested by the prior art.

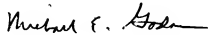
Claim 56 is added and further distinguishes over the prior art by stating, among other things, that the first and second power assist devices do not extend below the horizontal plane of the counter top surface when the breath guard is in its generally horizontal position and such that they do not extend down into the recess below the stated generally horizontal plane as the breath guard is moved between its raised and lowered positions. This design is neither shown nor suggested by the prior art.

CONCLUSION

The Commissioner is hereby authorized to charge the additional independent claim fee and a one-month Extension of Time to Deposit Account No. 19-1345. The Commissioner is also authorized to charge any under-payment or credit any over-payment to Deposit Account No. 19-1345 for this amendment.

In view of the foregoing, favorable consideration and allowance of this application is requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael E. Godar".

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